

11 KAR 4:020. Disapproval, assessment of liabilities, limitation, suspension or termination of eligibility to participate in authority programs.

RELATES TO: KRS 164.746(6), 164.748(13), (14), 34 C.F.R. 682.401(b)(10)(i)(C), 20 U.S.C. 1078(b)(1)(T), (U), 1082(h)(2), (3)

STATUTORY AUTHORITY: KRS 164.748(4), 34 C.F.R. 682.401(b)(10)(i)(C), 20 U.S.C. 1078(b)(1)(T), (U)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(5) and (6) authorize the authority to enter into contracts with eligible educational institutions and lenders to provide for administration of student financial assistance programs and KRS 164.748(13) authorizes the authority to take emergency action, disapprove, limit, suspend or terminate participation. KRS 164.746(6) requires the board to adopt administrative regulations in connection with administration of the authority's programs. Federal statutes, 20 U.S.C. 1078(b)(1)(T) and (U), and regulations, 34 C.F.R. 682.401(b)(10)(i)(C), governing the authority's insured student loan program, require the authority to establish, disseminate, and enforce criteria, rules, or administrative regulations which are substantially the same as administrative regulations with respect to emergency action, limitation, suspension, or termination issued by the secretary. This administrative regulation establishes the ministerial functions of authority officers and the conditions and procedures under which the authority or its delegated officers may initiate action to assess liabilities, withhold funds under emergency action, or disapprove, limit, suspend or terminate the participation of eligible educational institutions or eligible lenders in any of the student financial assistance programs administered by the authority.

Section 1. Definitions. (1) "Authority" is defined by KRS 164.740(1).

(2) "Authority program" means a program of student financial assistance administered or funded by the authority pursuant to KRS 164.740 through 164.785 or the federal act.

(3) "Board" is defined by KRS 164.740(2).

(4) "Delegated officer" means the executive director, general counsel, chief operating officer, or any other individual the board may designate to whom the board has delegated ministerial responsibilities set forth in this administrative regulation.

(5) "Eligible institution" is defined by KRS 164.740(4).

(6) "Eligible lender" is defined by KRS 164.740(5).

(7) "Federal act" is defined by KRS 164.740(8).

(8) "Funds" means any money, commitments to provide money, and commitments of insurance under any authority program.

(9) "Insured student loan" is defined by KRS 164.740(11).

(10) "Limitation" means:

(a) A limit on the number or percentage of students enrolled or planning to enroll in a participating institution who may receive funds through an authority program;

(b) A limit, for a stated period of time, on the percentage of a participating institution's total receipts from tuition and fees derived from authority program funds;

(c) A requirement that an institution that is already participating obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students, lenders and the authority funds;

(d) A limit on the number or amount of insured loans that may be made or held by a participating lender or that may be received by students at a participating institution; or

(e) Any special conditions or procedures required in the administration of authority programs.

(11) "Participating institution" is defined by KRS 164.740(14).

(12) "Participating lender" is defined KRS 164.740 (15).

(13) "Secretary" is defined by KRS 164.740(20).

Section 2. Standard of Conduct. (1) A participating institution shall establish and consistently implement policies and procedures to ensure that:

(a) The institution fully and continuously complies with all statutory, regulatory, and contractual requirements related to the administration of authority programs and performs all duties and responsibilities to:

1. Students;
2. Participating lenders;
3. The authority; and
4. If applicable to participation in an authority program, the secretary;

(b) The institution makes full and accurate representations of facts required to be reported or disclosed or voluntarily disclosed to:

1. Students;
2. Participating lenders;
3. The authority; and
4. If applicable to participation in an authority program, the secretary;

(c) The institution disburses, holds, and accounts for funds administered through any authority program with the standard of care and diligence of a fiduciary;

(d) The institution makes timely refunds to students as required by administrative regulations issued by the secretary or satisfies, within thirty (30) days of issuance, a final judgment attained by a student seeking a refund;

(e) Neither the institution owner, director, or officer of the institution is found guilty in any criminal, civil, or administrative proceeding or liable in any civil or administrative proceeding regarding the obtaining, maintenance, or disbursement of state or federal grant, loan or work assistance funds; and

(f) Neither the institution or an owner, director, or officer of the institution has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of state or federal financial assistance funds.

(2) A participating lender in the authority's insured student loan program shall establish and consistently implement policies and procedures to ensure that it:

(a) Fully and continuously complies with all statutory, regulatory, and contractual requirements related to the administration of authority programs and performs all duties and responsibilities to:

1. Students;
2. The authority; and
3. The secretary;

(b) Performs directly, or by contract with a third party servicer, due diligence in the approval, making, servicing and collection of authority insured student loans and in the timely and accurate filing of insurance claims on those loans.

(c) Makes full and accurate representations of facts required to be reported or disclosed or voluntarily disclosed to:

1. Students;
2. The authority; and
3. The secretary.

(3) A participating institution and a participating lender shall establish, maintain, and make accessible to the authority, and if applicable to participation in an authority program, to the secretary a system of complete and accurate records sufficient to demonstrate:

(a) Compliance with all statutory, regulatory, and contractual requirements related to the admin-

istration of authority programs and the performance of all duties and responsibilities to:

1. Students;
2. The authority; and
3. If applicable to participation in an authority program, the secretary;

(b) Full and accurate disclosure of facts required to be reported or disclosed or voluntarily disclosed to:

1. Students;
2. The authority; and
3. If applicable to participation in an authority program, the secretary; and

(c) Proper and timely disposition of funds and administration of authority programs.

(4) Noncompliance with the standard of conduct in this section by an eligible institution or an eligible lender shall be grounds for disapproval or limitation of participation and noncompliance with the standard of conduct by a participating institution or a participating lender shall be grounds for assessment of liabilities, limitation, suspension, or termination. The delegated officer may, upon receipt of a complaint or other reliable information indicating that a participant may be in violation of applicable laws, administrative regulations, special arrangements, agreements, or limitations, without restricting the availability of other remedies provided in this administrative regulation, give the participant an opportunity to respond to the complaint or information and show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence. The delegated officer shall not delay the procedures for assessment of liabilities, limitation, suspension, or termination. During the informal compliance process if the delay would result in harm to the authority, students, or the secretary or the informal compliance procedure will not result in correction of the alleged violation.

Section 3. Disapproval. The board or any of its delegated officers may, upon verification of misstatements of fact, financial instability, lack of administrative capability, or failure to meet eligibility requirements under applicable law or administrative regulations, related to an application to participate in an authority administered program, notify the applicant of the authority's intent to disapprove such application. For purposes of requesting review of a limitation on participation (including a requirement of a surety bond or other collateral) imposed as a precondition of initial approval or reinstatement, such limitation shall be regarded as a disapproval.

Section 4. Assessment of Liabilities. (1)(a) The board or any of its delegated officers may, initiate action to assess liabilities against a participating institution or a participating lender for payment or reimbursement of student financial assistance funds, upon evidence that a participant has, through acts of commission or omission, improperly expended or diverted to an improper purpose student financial assistance funds, improperly certified eligibility of a student or insured student loan borrower, or overcharged a student, a participating lender, the authority or the secretary.

(b) Conditions for which liabilities may be assessed include:

1. Disbursement of funds:
 - a. In excessive amounts;
 - b. To ineligible students or insured student loan borrowers;
 - c. In a manner not authorized by applicable laws or administrative regulations;
 - d. Without documentation; or
 - e. To students or insured student loan borrowers, after the academic year or period of enrollment for which the funds were authorized or awarded;
2. Retention of funds or failure to remit funds due on a timely basis;
3. Certification of an ineligible student;

4. Misappropriation or diversion of student financial assistance funds to a purpose other than the purpose for which the funds were awarded and sent to the participating institution;
5. Overcharging of fees, interest, or special allowance by a participating lender; or
6. Failure to account for funds received or expended to properly administer any program for which the participant has previously been approved.

(c) A demand by the authority to a participating institution for return of undisbursed student financial assistance funds remaining in the possession of the institution shall not be deemed an assessment of liability subject to appeal under this administrative regulation.

(2) The board or its delegated officer may notify a participating institution or a participating lender that the authority requires the participant to take reasonable and appropriate corrective action to remedy a violation of applicable laws, administrative regulations, special arrangements, agreements or limitations. The corrective action may include payment of any funds to the authority, or to designated recipients, which the participant improperly received, withheld, disbursed or caused to be awarded or disbursed. Corrective action may, for example, relate to:

(a) With respect to the insured student loan program:

1. Ineligible interest benefits, special allowance, or claims paid by the authority; and
2. Discounts, premiums or excess interest paid in violations of rules of the secretary; and

(b) With respect to all authority programs:

1. Refunds due to students under program administrative regulations; and
2. Any grants, work-study assistance, scholarships or loans

caused to be awarded or disbursed to ineligible students, in excess of legal maximums, or otherwise in violation of applicable administrative regulations.

Section 5. Limitation. The board or any of its delegated officers may, upon evidence that a participating institution or a participating lender has failed through acts of commission or omission to fully adhere to the standard of conduct set forth in Section 2 of this administrative regulation pertaining to any authority administered program for which the participant has previously been approved, notify the participant of the authority's intent to place limits on the participant's eligibility to participate in authority administered programs.

Section 6. Suspension. The board or any of its delegated officers may, upon evidence that a participating institution or a participating lender has substantially or repeatedly failed through acts of commission or omission to adhere to the standard of conduct set forth in Section 2 of this administrative regulation pertaining to any authority administered program for which the participant has previously been approved, notify the participant of the authority's intent to suspend the participant's eligibility to participate in authority administered programs for a period not to exceed sixty (60) days, unless the authority and participant agree otherwise or the delegated officer initiates a limitation or termination during the sixty (60) days.

Section 7. Termination. (1) The board or any of its delegated officers may, following any period of limitation or suspension, in the absence of correction of deficiencies which resulted in the adverse action, notify the participant of the authority's intent to terminate a participant's eligibility to participate in all or any of the authority administered programs.

(2) The board or any of its delegated officers may, with or without prior limitation or suspension, notify the participant of the authority's intent to terminate the participation of a participating institution or a participating lender upon evidence of:

(a) An intentional violation of applicable laws and administrative regulations, including the standard of conduct set forth in Section 2 of this administrative regulation; or

(b) A substantial pattern or practice indicating failure or inability to adhere to the standard of

conduct set forth in Section 2 of this administrative regulation, including but not limited to a repetition of previously cited deficiencies;

(3) A termination prohibits a participant or the authority from making or increasing awards under authority programs, making any other new obligations against authority funds, and prohibits further guarantee commitments by the authority under the insured student loan programs.

(4) The participation of an educational institution or lender shall be deemed automatically terminated without prior action or notice by the authority upon cessation of operation as an ongoing business, loss of state licensure, or termination of its eligibility by the secretary.

Section 8. Emergency Action. (1) Under an emergency action, the board acting through its delegated officer may immediately withhold program funds from the students attending a participating institution or from a participating lender, withdraw the right of the participant to certify or approve applications, and preclude the participant from obligating or disbursing funds under any authority program. The delegated officer may initiate an emergency action against a participant only if that officer:

(a) Receives information, determined by the delegated official to be reliable:

1. That the participant is substantially failing to adhere to the standard of conduct set forth in Section 2 of this administrative regulation or is violating any provision of statute, administrative regulation, or any applicable special arrangement, agreement, or limitation; or

2. That the participant has misrepresented any material facts to students, the authority, or, as applicable to participation in an authority program, the secretary; or

3. That the participant ceases to meet the requirements for approval of participation by the authority;

(b) Determines that immediate action is necessary to prevent loss or misuse of funds; and

(c) Determines that the risk of loss or misuse outweighs the importance of delaying the effective date of action through the procedures for limitation, suspension, or termination contained in this administrative regulation.

(2) The emergency action takes effect on the date a notice, personally delivered or mailed to the participant by the delegated officer by certified mail, return receipt requested, is received by the participant. The notice shall state the basis on which the emergency action is based, the consequences of the emergency action to the institution or lender, and that the participant may request an opportunity to show cause why the emergency action is unwarranted. An emergency action may not exceed thirty (30) days unless the board or a delegated officer initiates a limitation, suspension, or termination proceeding under this subpart against the participant within those thirty (30) days, in which case the delegated officer may extend the emergency action until the completion of those proceedings, including any appeal. The continuation, modification, or cessation of the emergency action during the period described in this paragraph is at the sole discretion of the delegated officer.

Section 9. Notices. (1) If the delegated officer finds that the authority should assess any liabilities or that participation of any applicant or participant should be disapproved, limited, suspended or terminated by act of the authority, the applicant or participant shall be provided with notice of such action which shall be issued on behalf of the board and signed by the officer and shall contain a concise statement of the consequences and reason for the disapproval, assessment of liabilities, limitation, suspension or termination of participation and sufficient information to reasonably apprise the applicant or participant of the right to request reconsideration of disapproval or submit to the authority a request for a hearing on all issues contained therein or written material indicating why the action should not take place. The proposed date for payment of any assessed liabilities or the proposed effective date of any limitation, suspension or termination, which shall be

more than twenty (20) days after the date of mailing of the notice of intent, shall be specified in the notice. The assessment of liabilities shall be based upon payment by the specified due date, and any extension of that date due to a request for a hearing or further appeal may result in the accrual of additional amounts due if interest accrual is applicable.

(2) All requests for hearings shall be made to the authority at its office located in Frankfort, Kentucky 40601, within twenty (20) days of receipt of the notice. All notices to or from the authority shall be personally delivered by an individual at least eighteen (18) years old, who shall prove service by his affidavit or signature of the recipient, or by forwarding the notice by U.S. certified mail, return receipt requested, to the address of the applicant or participant (as reflected by the records of the authority) or to the authority. If a party refuses to accept a notice served under this section, the notice shall be deemed received on the date that the party refuses to accept the notice.

Section 10. Request for Review. (1) An eligible institution or an eligible lender seeking reconsideration of a final determination of disapproval shall file a written request together with any relevant records or materials for review with the delegated officer issuing the determination no later than forty-five (45) days from the date it receives the determination. The applicant shall identify the issues and facts in dispute and the applicant's position together with the pertinent facts and reasons supporting that position.

(2) An applicant requesting review of the determination of disapproval issued by the delegated officer shall have the burden of proving that the applicant complied with requirements for approval. An applicant may submit as additional evidence to the delegated officer only materials within one (1) or more of the following categories:

(a) Complete audit reports and audit work papers for audits performed by the United States Education Department or independent audit work papers, records, and other materials;

(b) Complete program review reports and reports of resolution of disputed program reviews;

(c) Complete accreditation or licensure review reports and reports of resolution of disputed accreditation or licensure findings;

(d) Internal records and other materials if the records or materials are not:

1. Related to a period of time other than the period of time under consideration;

2. Related to an audit or program review of an institution or lender other than the applicant (unless the determination involves a change of ownership); or

3. Related to policies and procedures that have not yet been implemented.

Section 11. Stay of Proceedings. A limitation, suspension or termination will not be effective on the date specified in the notice if the delegated officer receives a timely request for a hearing, and the proposed effective date shall continue to be stayed pending the outcome of a hearing.

Section 12. Hearings. (1) In the event assessment of liabilities, limitation, suspension or termination of eligibility results from the action of a delegated officer of the authority, the participant may request a hearing to determine the facts in the case or submit written material indicating why the action should not take place. If the participant does not request a hearing, but submits written material, the delegated officer shall consider that material and notify the participant that either the proposed action is dismissed or the proposed action shall take effect on a specified date. Nothing in this section shall preclude the delegated officer, at his sole discretion, from engaging in informal discussions with representatives of the participant for the purpose of settling the dispute.

(2) Notification of hearing. Upon receipt of a participant's request for a hearing, the delegated officer shall arrange for a hearing on the record before a hearing officer, and within thirty (30) days of the delegated officer's receipt of an institution's request for review, the hearing officer shall establish a schedule for any discovery, prehearing conferences, and the time and place of the hear-

ing, which shall be scheduled to occur no later than 120 days from the date upon which the delegated officer receives the request for a hearing.

(3) At a hearing the officer or officers of the participant may be accompanied by counsel of their own choosing and at their own expense. The hearing may be conducted by a hearing officer or a hearing committee appointed by the board. The participant proceeded against shall be entitled to be represented at the hearing in person or by counsel or both and shall be entitled to introduce testimony by witnesses or, if the hearing officer so permits, by depositions.

(4) A prehearing conference may be convened by the hearing officer if he or she thinks that such a conference would be useful, or if requested by the authority or the participant to allow the parties to settle or narrow the dispute. If agreed to by the hearing officer and the parties, a prehearing conference may consist of a conference telephone call, an informal meeting, or the submission and exchange of written material.

(5) The hearing process may be expedited as agreed by the hearing officer and the parties. Procedures to expedite may include, but are not limited to, the following:

- (a) Scheduling of conferences;
- (b) Setting time limits for hearings, submission of written documents, and discovery;
- (c) Restricting the number or length of submissions;
- (d) Shortening any time limits prescribed in this administrative regulation;
- (e) Limiting the hearing to written documentation; or
- (d) Stipulation by the parties to facts and legal authorities not in dispute.

(6) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, only evidence that is relevant and material to the proceeding and is not unduly repetitious shall be admissible, and discussions of settlement between the parties or the terms of settlement offers are not admissible. The hearing officer shall not admit evidence that is excludable on constitutional or statutory grounds or privileged as recognized in the courts of the Commonwealth. Hearsay evidence shall be admissible, but shall not be sufficient in itself to support the hearing officer's decision. All testimony shall be made under oath. Evidentiary objections may be made at any time during the prehearing or hearing process and shall be noted in the record of the hearing.

(7) The burden of proof in any hearing under this section will be determined in accordance with the provisions of KRS 13B.090.

(8) Discovery, as provided for under the Kentucky Rules of Civil Procedure, is permitted, except that, in recognition of the authority's contractual right to inspect records and the participant's right to inspect public records under KRS 61.870 et seq., the hearing officer may limit the scope, method, and time for discovery as appropriate to expeditiously and fairly resolve the issues, and the hearing officer may summarily rule against a noncomplying party. The hearing officer may not issue subpoenas. Nothing in this subsection shall be construed as allowing access to the personal notes, observations, or conclusions of authority staff or to the work product of counsel.

(9) The authority shall provide for recording of the proceeding and shall make the record available to the participant upon its request and upon its payment of any fee required by the individual providing a transcript.

(10) The hearing officer shall regulate the course of the proceeding and conduct of the parties during the hearing and take all steps necessary to conduct a fair and impartial proceeding. The parties shall provide available personnel who have knowledge about the matter under review for oral or written examination. The hearing officer shall take whatever measures are appropriate to expedite the proceeding, and may terminate the hearing and issue a decision against a party failing to comply with any time limits or procedure.

(11)(a) Hearing officers and hearing committees shall prepare findings of fact and conclusions of law based only on evidence considered at the hearing and on matters given official notice, and

shall issue a written initial decision to the parties by certified mail, return receipt requested, within sixty (60) days after the last brief is filed, the last day of the hearing (if the hearing officer does not request the parties to submit briefs), or the date on which the hearing officer terminates the hearing.

(b) The hearing officer's decision shall state whether the imposition of the liabilities, limitation, suspension or termination sought by the delegated officer is warranted, in whole or in part.

(c) If the action brought against a participant involves its failure to provide a surety bond, letter of credit or other collateral in the amount specified by the delegated officer, the hearing officer shall find that the amount of the bond, letter of credit or other collateral specified by the delegated officer was appropriate unless the participant can demonstrate that the amount was unreasonable.

Section 13. Decisions and Appeals. (1) All initial assessing liabilities, disapproving, limiting, suspending or terminating participation may be made by a delegated officer of the authority and shall be binding upon the authority and the applicant or participant as the decision of the board in the absence of a request for review of disapproval in accordance with Section 10 of this administrative regulation or an appeal of other actions in accordance with Section 12 of this administrative regulation by the applicant or participant to the authority.

(2) In the event the applicant, participant, or a delegated officer of the authority does not petition the board for a review of the hearing officer's decision, the decision resulting from a hearing conducted by the authority shall become final and conclusive as the decision of the board twenty (20) days after notice thereof is given as provided.

(3)(a) An appeal to the board of a hearing officer's initial decision is made by sending a written notice of appeal to the executive director of the authority. This notice must be postmarked not later than twenty (20) days after the issuance of the hearing officer's initial decision, and the appealing party shall send a copy of its appeal notice to the other party.

(b) Within ten (10) days after submitting the notice of appeal, the party that appeals shall submit a brief to the board explaining why the initial decision of the hearing officer should be overturned or modified. The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact shall be supported by the evidence introduced into the record at the hearing, stipulations of the parties, documentary evidence submitted to the hearing officer (if the hearing consisted of written submissions), or matters that may be officially noticed. The opposing party shall respond within ten (10) days after receipt of a brief and proposed findings of fact or conclusions of law from the appealing party. Neither party may introduce new evidence on appeal to the board. Each party shall provide a copy of its brief to the other party when it submits its brief to the board.

(c) The initial decision of the hearing officer assessing liabilities or limiting, suspending, or terminating participation does not take effect pending the appeal.

(d) The board reviews the hearing officer's initial decision and issues a final decision. The board shall adopt the initial decision unless it is clearly unsupported by the evidence presented at the hearing. The board considers only evidence introduced into the record at the hearing, facts agreed to by the parties, documents submitted to the hearing officer (if the hearing consisted of only written submissions), and matters that may be officially noticed. The board's final decision may affirm, modify or reverse the hearing officer's initial decision and shall include a statement of the reasons for the decision.

(e) An assessment of liabilities becomes binding and a limitation, suspension or termination takes effect upon the date on which notice of the final decision of the board is mailed to the participant.

Section 14. Removal of Limitation. (1) A participating institution or a participating lender whose participation in any or all authority programs has been limited after participation may not apply for removal of the limitation before the expiration of twelve (12) months from the effective date of the limitation.

(2) After the minimum limitation period, the participant may request removal of the limitation in writing and show that the deficiency on which the limitation was based has been corrected.

(3) No later than sixty (60) days after the receipt of the request, the delegated officer shall respond to the participant by granting its request, denying its request, or granting the request subject to other limitations.

(4) If the delegated officer denies the request or establishes other limitations, the participant may request a review in accordance with Section 10 of this administrative regulation and be given an opportunity to show cause why its participation should be fully reinstated.

(5) The participant's request for a review shall not waive its right to participate in any or all authority programs if it complies with the continuing limitation(s) pending the outcome of the review.

Section 15. Reinstatement After Termination. (1) An eligible institution or an eligible lender whose participation in any or all of the authority programs has been terminated may file a request for reinstatement as a participating institution or a participating lender.

(2) Except for an institution or lender whose participation has been terminated for engaging in substantial misrepresentation, a request for reinstatement may not be made before the expiration of eighteen (18) months after the effective date of the termination.

(3) An institution or lender whose participation was terminated because the institution or lender engaged in substantial misrepresentation may not request reinstatement before the expiration of three (3) months after the effective date of the termination.

(4) An institution or lender seeking reinstatement shall:

(a) Demonstrate to the authority's satisfaction that it has corrected the deficiencies on which its termination was based, including payment in full to the authority or to other designated recipients of funds that the institution or lender has improperly received, withheld, disbursed or caused to be disbursed;

(b) Meet all the requirements for initial approval of participation; and

(c) Enter into a new administrative agreement or contract of insurance with the authority.

(5) The board or its delegated officer, within sixty (60) days of receiving the reinstatement request, shall grant the request, deny the request, or grant the request subject to limitations. A denial of the request under this section shall be deemed to be a determination of disapproval under Section 3 of this administrative regulation.

Section 16. Report to Secretary. When a decision to limit, suspend or terminate the participation of a participating institution or a participating lender becomes final in accordance with Section 13 of this administrative regulation, and the decision effects participation in the authority's insured student loan program, the delegated officer initiating the action shall report the action to the secretary for review pursuant to Section 432(h)(2) and (3) of the federal act.

Section 17. If any period of time prescribed by this administrative regulation differs from the corresponding period of time prescribed in 11 KAR 3:060, the shorter period of time shall be controlling. (2 Ky.R. 268; eff. 2-4-1975; Am. 5 Ky.R. 240; eff. 11-1-1978; 19 Ky.R. 428; 921; eff. 12-9-1992; 31 Ky.R. 129; eff. 9-13-2004; TAm eff. 4-27-2016.)